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Handell
P. J. #1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-190351

DATE: January 19, 1978

MATTER OF: Pennwalt Corporation - reconsideration

DIGEST:

Since protester does not advance any additional facts or legal arguments which show that earlier decision was erroneous, prior decision holding protest untimely is affirmed.

Pennwalt Corporation (Pennwalt) has requested reconsideration of B-190351, November 21, 1977, in which we declined to consider its protest because of untimeliness.

Pennwalt protested that its bid was improperly rejected because the evaluation of its product was not based upon the salient features contained in the solicitation.

Our Office was advised that on September 2, 1977, General Services Administration's (GSA) testing laboratory (Rock Island) discussed Pennwalt's bid with Pennwalt and advised Pennwalt that its bid would not be considered. In addition, we were advised by Pennwalt that it learned of its bid's rejection and subsequent award on September 15, 1977. It is also clear from the record that Pennwalt knew, at least generally, of the reason for rejection of its bid by that date. Accordingly, using the September 15 date, we found the protest to be untimely in accordance with section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1977), which requires a protest to be "filed no later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier."

The protester, through counsel, argues that its September 19, 1977, letter addressed to GSA was an attempt to:

- "a. Adhere to the spirit of CFR Section 20.2 (a) and first seek resolution of Pennwalt's protest of award with the contracting agency.

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"b. File a protest with the contracting agency within 10 days of learning of the award to a competitor, thereby preserving Pennwalt's right of subsequent appeal to the General Accounting Officer."

We cannot agree. In its September 19 letter Pennwalt did not protest the rejection of its bid; rather, it confirmed its oral request of September 15, 1977, for a written statement from GSA setting forth the reasons for the rejection of Pennwalt's bid, and requested appeal forms. Consequently, Pennwalt neither protested to GSA nor to our Office within 10 working days.

With regard to Pennwalt's reference to "appeal forms," it is irrelevant as to why such a reference was made. As we stated in our prior discussion of this protest:

"* * *, since our Bid Protest Procedures have been published in the Federal Register (40 Fed. Reg. 17979, April 24, 1973), protesters are charged with constructive notice of their provisions. Power Conversion, Inc., B-186719, September 20, 1976, 76-2 CPD 256."

Therefore, even if the agency failed to advise Pennwalt of the proper protest procedures, Pennwalt is charged with constructive notice of their provisions.

Since Pennwalt has not advanced additional facts or offered any arguments of law that demonstrate our initial decision was in error, we remain of the opinion that the protest is not for consideration by our Office.

Accordingly, our prior decision is affirmed.

Deputy


Comptroller General
of the United States